Tan Choon Huat v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 244 OF 1990
RUBIN JC
15 MAY 1991

Criminal Law — Possession of offensive weapon — Consorting — Evidential presumption — Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Ed), ss 6 & 8

Criminal Procedure — Statement of accused — Voluntariness — Long period of interrogation without lunch break — Proper procedure not followed — Accused not asked if he wanted to make any amendments — Criminal Procedure Code (Cap 68, 1985 Ed), s 122(5) — Evidence Act (Cap 97, 1990 Ed), ss 24 & 105

Criminal Procedure — Failure of justice — Approach to be taken by the court — Criminal Procedure Code (Cap 68, 1985 Ed), ss 261 & 396

Criminal Procedure — Appeal — Appellate court will interfere with finding of a trial court if conclusion reached by it is against the weight of evidence

The accused and two others were apprehended at about 1.15am on 9 October 1986 at the National Stadium. One of them, Low, was seen throwing a knife and another, Goh, was found to have a knife tucked in his waist. The accused was unarmed. All three were charged under the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Ed). Low and Goh pleaded guilty after their defence was called. The accused gave evidence in his defence and was found guilty. During the trial the accused's statement was admitted in evidence after it was found to be taken voluntarily. The appellant appealed.

Held, dismissing the appeal against conviction but varying the sentence:

(1) There was uncontroverted evidence that the appellant, an 18-year-old, was interrogated without rest from 10.48am to 3.05 pm and was not given lunch. The statement did not show that the appellant knew the charge against him or that he was invited to make any alterations or corrections to the statement. The statement should not have been admitted.

(2) An appeal court would not generally interfere with the finding of a trial court. But if the conclusion reached by the trial court was against the weight of evidence, an appeal court would in the interests of justice intervene.

(3) The evidential presumption that the appellant knew that his companions had offensive weapons with them was compelling. The appellant, in his defence, was unable to offer any plausible explanation why he was at the entrance of the National Stadium at 1.15am amidst armed companions.

(4) In addressing the question whether there was any failure or miscarriage of justice or whether a conviction was unsafe, the court had to ask itself the subjective question of whether it was content to allow the verdict to stand, or whether there was some lurking doubt.

(5) Notwithstanding the errors in the court below, there was no failure of justice.

(6) The sentence was varied to one month's imprisonment and six strokes of the cane.

Cases referred to

1 *Goh Ah San & Ors* v *The King* [1938] MLJ 95 (refd)
2 *Chang Lee Swee* v *PP* [1985] 1 MLJ 75 (refd)
3 *Mohamed Shariff* v *PP* [1964] MLJ 64 (refd)
4 *R* v *Sean Cooper* (1968) 53 Cr App R 82; [1969] 1 All ER 32 (refd)
5 *R* v *Wallace and Short* (1968) 67 Cr App R 291 (refd)
6 *Stafford* v *DPP* [1973] 3 WLR 719; [1973] 3 All ER 762 (refd)

Legislation referred to

Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Ed) ss 6, 8
Criminal Procedure Code (Cap 68, 1985 Ed) ss 122, 180, 261, 396
Evidence Act (Cap 97, 1990 Ed) ss 24, 105

B Rengarajoo for the appellant/accused.
Palaniappan Sundararaj (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Rubin JC: This is an appeal against conviction and sentence. The charge on which the appellant was convicted reads as follows:

> Charge in MAC 17374 of 1986
>
> You, Tan Choon Huat are charged that you, on or about 9 October 1986 at about 1.15am, at National Stadium East Entrance, Stadium Road, Singapore, which is a public place, were found in the company of Goh Chong Chi m/27 yrs and Low Keau An m/23 yrs, who had in their possession an offensive weapon, to wit, a knife each, in contravention of s 6(1) of Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Ed) in circumstances which raise a reasonable presumption that you knew that the said Goh Chong Chi and Low Keau An had in their possession such weapons, and thereby committed an offence punishable under s 8(1) read with s 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Ed).

Section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 1985 Ed) ('the Act') reads:

> Any person who in any public road or place carries or has in his possession or under his control any offensive weapon otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 years and shall also be punished with caning with not less than 6 strokes.

Section 8(1) of the Act reads:

> Any person who consorts with, or is found in the company of, another person who is carrying or has in his possession or under his control any offensive weapon in contravention of section 6, in circumstances which raise a reasonable presumption that he knew that that other person was carrying or had in his possession or under his control any such weapon shall, unless he shall prove that he had reasonable grounds for believing that that other person was carrying or had in his possession or under his control any such weapon for a lawful purpose, be guilty of an offence and shall be

liable on conviction to the like punishment as that other person with whom he was consorting or in whose company he was found.

The appellant and the other two persons, namely, Goh and Low, referred to in the charge were tried jointly. The appellant was charged under s 8(1) read with s 6(1) of the Act whereas Goh and Low were charged only under s 6(1) of the Act for being in possession of a knife each without lawful authority. As it happened, after the prosecution closed its case, Goh and Low decided to plead guilty and were convicted and sentenced to four months' imprisonment and were given six strokes of the cane each.

The prosecution's case against the appellant was that the appellant and the other two persons (the said Goh and Low) were apprehended at about 1.15am on 9 October 1986 near the east entrance of the National Stadium. They were seen by the police to be behaving in a suspicious manner and the police saw one of them, Low, throwing away a knife which he had with him. In the ensuing search by the police, it was found that the other person Goh had a knife tucked in his waist. The appellant did not have any offensive weapon on him. The weapons seized were kitchen knives.

In the event, they were all taken to the Beach Road Police Station where they were interrogated, and insofar as is material to this appeal, a statement was recorded from the appellant under s 122(5) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC') at about 4.30pm on the same day (about 15 hours later).

The admission of the said statement was objected to at the trial on the grounds that it was not given voluntarily. It was alleged that it was obtained under vigorous and continuous interrogation of the appellant between 10.48am and 3.05pm on 9 October 1986 without lunch, the police knowing full well that the appellant had not taken his breakfast that morning; he was denied sleep and rest for over 15 hours before his statement was recorded; he had been assaulted, ill-treated and threatened during the interrogation; he was told that he would be remanded for seven days if he did not make a statement; he would be taken to his flat handcuffed but if he were to sign the statement he would not be jailed and was promised that the court would be asked by the police to be lenient. The appellant was also not allowed an opportunity to make any amendment, alteration or addition to the statement recorded and that considerable pressure was brought to bear upon the appellant, then only 18 years of age.

After a somewhat spirited trial within a trial, the learned magistrate admitted the statement and held that he was satisfied beyond reasonable doubt that the statement was given by the appellant voluntarily without any threat, inducement or promise held out to the appellant. The material part of the statement thus admitted reads as follows:

> 3 On 8 October 1986, I was not working. I was at the rented room at 1200 hrs. On the same day at about 10.30pm my room-mates, namely, Suah Yee (refers to Goh Chong Chi) and Lau Shu (refers to Low Keau An) came home. They bought some beers. I then joined them in the drinking session. Three of us drank about eight cans of beers. Whilst drinking I don't know who started to discuss about the topic of committing robbery. At that time I was rather drunk. I remembered that I agreed to join them in the robbery. At about 1.00am three of us left the rented room and walked to National Stadium. If I am not mistaken I think I heard Lau Shu suggesting going to National Stadium. So three of us went to National Stadium. Halfway walking along Lorong 6 Geylang junction, Lau Shu and Suah Yee told me that both of them carried a knife but they did not showed (sic) it to me. From then I know they are carrying a knife as I believed them. At about 0115 hrs whilst walking along National Stadium, I saw a police patrol car approaching and it shone its headlight on three of us. The policemen then say to Lau Shu what he had throwed (sic) and I saw the uniform policeman picking up a knife which I believed was thrown away by Lau Shu. The other policeman then searched me and Suah Yee. The policeman did not find anything on me but I saw the policeman found a knife from Suah Yee. Three of us were thus placed under arrest and subsequently brought back to Beach Road Police Stn.
>
> 4 I admit that I followed the two of my friends, namely, Lau Shu and Suah Yee as three of us intends (sic) to commit a robbery around National Stadium.

It is unfortunate that the learned magistrate seemed to have dealt with the defence objections summarily. He did not refer to or indicate anywhere in his grounds any aspects of the evidence given at the trial within a trial nor did he give any reasons why he chose to accept the version of the prosecution as against the defence though there were several unsatisfactory features in the prosecution evidence. Many an answer from the police witnesses was less than satisfactory and in some instances, glaringly perfunctory. There was uncontroverted evidence that the 18-year-old appellant was interrogated without rest or respite from 10.48am and was given no lunch even till 4.50pm on that date when he was supposed to have given a statement under s 122(5) of the CPC. The denial of lunch to the appellant is all the more troubling particularly when his interrogators knew that he did not consume his breakfast though the non-consumption had nothing to do with the police.

The statement thus recorded purportedly under s 122(5) of the CPC does not show that the appellant knew the charge against him nor does the record show anywhere that the appellant was invited to make any alteration, correction or amendment to the statement recorded.

It is settled law that a confession cannot be admitted unless it was made voluntarily and the elements of voluntariness must be proved by the prosecution be-

yond reasonable doubt. This is provided for under ss 24 and 105 of our Evidence Act (Cap 97, 1990 Ed). The expression 'satisfied beyond reasonable doubt' would remain an elusive abstraction unless the court trying the contested issue sets out in its grounds some basis for its conclusions. An appeal court is generally disinclined to interfere with the finding of a trial court since the trial court has the advantage of hearing evidence and observing the demeanour of witnesses. But if the conclusion reached by the trial court is against the weight of evidence or that the inferences drawn by the trial court could not find support from the primary facts on the record, an appeal court would in the interests of justice intervene. See *Goh Ah San & Ors* v *The King*[1] at p 99; *Chang Lee Swee* v *PP*[2] at p 84 (letters B and C); and *Mohamed Shariff* v *PP*.[3]

Quite apart from the unsatisfactory features of the evidence of the prosecution witnesses as to voluntariness, the statement recorded did not even conform with standard procedures usually adopted by the police in investigations of this nature. The investigating officer ('PW3') said in answer to a question that he did invite the appellant to make amendments or alterations if the appellant so desired. But when it was put to the investigating officer that the statement recorded by him made no mention that he invited the appellant to make any alteration, amendment or correction, his answer was: 'at the end of each statement, I would normally ask the accused whether he wanted to make any alteration.' By 'normally asked' it does not necessarily mean that it was in fact asked in this case and that is what was required to satisfy the provisions of the law. The cumulative effect of all the unsatisfactory features tends to cast serious doubt on the prosecution's evidence as to the voluntariness of the statement. The statement should not have been admitted.

Was the learned trial judge therefore wrong in calling the defence of the appellant? Even without regard to the said statement, the prosecution had placed before the court the following evidence:

(a) that Low and Goh were in possession of offensive weapons, ie a knife each without lawful authority in a public place in contravention of s 6(1) of the Act;
(b) the appellant was found in their company;
(c) they were all found at 1.15am at the entrance of the National Stadium where courting couples frequented; and
(d) the three of them were behaving suspiciously and one was seen to be throwing away a knife.

Upon reception of such evidence, the question that remained to be answered by the court under s 8(1) of the Act was whether in the given circumstances, it was reasonable to presume or suppose that the appellant knew that either one of his companions had in his possession an offensive weapon. In the given circumstances, the evidential presumption that the appellant knew that his companions had with them those offensive weapons for unlawful purposes is compelling and calling the defence was therefore a logical sequence pursuant to s 180(f) of the CPC.

As the events unfolded, after the defence was called, the appellant elected to give evidence on oath. In his defence, the appellant said that on the night of 8 October 1986, he had been drinking beer after having earlier taken a sleeping tablet which he got from Low. After the drinking session, he joined Goh and Low for a walk. When the three of them reached a 24-hour coffee shop, Low suggested that they go to the National Stadium. They did so and when they reached the entrance of the National Stadium, Low told the appellant that he had a knife on him. Within minutes of Low telling him about the knife, a police patrol car appeared and they were all apprehended. The main plank of the appellant's defence was that he did not learn about the knife until a few minutes before the police came and apprehended them. The appellant said that he did not have a clear picture of what was going on because of the effect of the drinks.

The learned magistrate in the result found the appellant guilty and his principal conclusions were as follows:

> In this case, at its best the defence might succeed in proving that when the accused left his quarters with Goh and Low he did not know about the knives. What the defence had to do next was not the rebuttal of the presumption that the accused knew about the knives, but to prove, on a balance of probabilities, that whilst he knew about the knives which he admitted he did he had reasonable grounds for believing that his companions had them in their possession for a lawful purpose, for example, that they had intended to use the knives to open up durians which they were going to purchase. This the defence did not do.
>
> Instead, the accused's purported defence was that he learnt about the knives too late for him to dissociate himself from his companions. He was too shocked on learning about the knives, too drunk, and had too little time to react in a manner which a reasonable person would if circumstances had not been so adverse. By reason of the foregoing, this defence, even if it were believed, fails for as soon as the accused knew about the knives he must have reasonable grounds for believing that his companions' possession of them was (sic) for a lawful purpose. And anything short of that meant that he had the mens rea for the offence under s 8(1) of the Act. This, in my opinion, is the position in law with regard to the defence which the accused tried unsuccessfully to raise.

Many grounds were advanced by counsel for the appellant on appeal but the main point of contention was that the analysis of s 8(1) of the Act by the learned magis-

trate was erroneous and that the prosecution had not proven guilty intent on the totality of the evidence.

The learned magistrate's analysis of s 8(1) of the Act and the reasons for his conclusions are somewhat delphic. The learned magistrate was in error as to what the defence had to do to rebut the prosecution's case. Section 8(1) of the Act does not, in any way, limit the right of an accused to cast a reasonable doubt on any of the ingredients of the offence. The accused is entitled, apart from the statutory defence available to him, to negative the prosecution's case, if he could, by placing some evidence acceptable to the court for it to conclude that he did not know or could not have suspected that the others were in possession of offensive weapons.

But the appellant's evidence or explanation in defence came nowhere near raising any reasonable doubt on the prosecution's case. The appellant was plainly unable to offer any plausible explanation why he was at the entrance of the National Stadium at 1.15am amidst armed companions. Worse still, his excuse for not withdrawing from the group soon after he learnt that one of them had a knife is wholly unsatisfactory. To my mind, the appellant has not raised any reasonable doubt on the prosecution's case.

It, however, remains for me to consider a residuary legal aspect of the appeal, that is, whether the errors of the court below warrant or justify my setting aside the appellant's conviction.

Section 261 of the CPC provides that:

> No judgment, sentence or order of a District Court or Magistrate's Court shall be reversed or set aside unless it is shown to the satisfaction of the High court that the judgment, acquittal, sentence or order was either wrong in law or against the weight of the evidence, or, in the case of a sentence, manifestly excessive or inadequate in the circumstances of the case.

Section 396 of the CPC provides that:

> Subject to the provisions hereinbefore contained, no finding, sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account of —
>
> (a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;
> (b) the want of any sanction required by section 129; or
> (c) the improper admission or rejection of any evidence,
>
> unless the error, omission, improper admission or rejection of evidence, irregularity or want has occasioned a failure of justice.

In addressing the question whether there was any failure or miscarriage of justice or whether the conviction is unsafe or unsatisfactory, I asked the subjective question whether I am content to allow the verdict to stand as it is or whether there is not some lurking doubt in my mind which makes me wonder whether an injustice had been done. This is a reaction which may not be based strictly on the evidence as such but it is a reaction which can be produced by the general feel of the case as experienced by the court (vide Widgery LJ (as he then was) in *R* v *Sean Cooper*[4] at p 86). See also *R* v *Wallace and Short*[5] at p 298 and *Stafford* v *DPP*.[6] Notwithstanding the errors in the court below, I am satisfied that those errors did not occasion a failure or justice to the appellant. There was without doubt ample evidence against the appellant as to his guilt. The appeal against conviction is therefore dismissed.

On the question of sentence, it is noted that the appellant, a Malaysian, is 18 years of age and has no antecedents. His companions, Goh and Low, who were charged under s 6(1) of the Act were given four months' imprisonment and the minimum mandatory six strokes of the cane. It was said that the appellant was at that stage under the influence of drinks and was led into the escapade by his other two companions who were older than him. However, having regard to the nature of the offence, the circumstances of the case and the fact that the appellant is a foreign national not resident in Singapore, a probation order appears to be wholly inappropriate. Taking into consideration all relevant factors, I am of the view that a sentence of one month's imprisonment and six (6) strokes of the cane would be an adequate punishment. The sentence is varied accordingly.

Appeal against conviction dismissed; sentence varied.

Solicitors: *B Rengarajoo & Associates.*

Reported by *Mathavan Devadas*